

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PHILIP S. PATRICK,

Petitioner,

v.

**WARDEN, NEW JERSEY STATE
PRISON, et al.,**

Defendants.

Civil Action No. 22-1883 (SDW)

MEMORANDUM OPINION

IT APPEARING THAT:

1. On or about April 3, 2022, Petitioner Philip S. Patrick, filed a counseled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state court conviction and sentence in the New Jersey Superior Court, Law Division, Union County. (ECF No. 1).

Petitioner thereafter filed a corrected, counseled petition. (ECF No. 7).

2. Respondents filed an answer to the corrected petition on August 25, 2022. (ECF No. 15). In that answer, Respondents raised the affirmative defense that ground three of the petition is unexhausted because it was not fairly presented to the state courts. (*Id.* at 30-35). Petitioner filed a reply brief. (ECF No. 16).

3. On April 11, 2023, pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), this Court directed Petitioner to show cause, within 30 days, as to why his corrected, counseled habeas petition should not be dismissed without prejudice because it contains an unexhausted claim. Petitioner was given the opportunity to withdraw the unexhausted claim or seek a stay and abeyance of his petition, while he exhausts this claim in the state courts, but he failed to respond.

Therefore, this Court will dismiss the petition without prejudice, as a mixed habeas petition containing both exhausted and unexhausted claims. *Rose v. Lundy*, 455 U.S. 509 (1982).

An appropriate Order follows.

DATE: May 22, 2023

A handwritten signature in black ink, appearing to read "S. Wigenton", written over a horizontal line.

Hon. Susan D. Wigenton,
United States District Judge